

Leg

10 August 1989  
OCA 2811-89

MEMORANDUM FOR: General Counsel

FROM:

[Redacted]  
Acting Deputy Director for Legislation  
Office of Congressional Affairs

STAT

SUBJECT: Intelligence Authorization Bill

1. Attached for your information is a copy of H.R. 2748, the "Intelligence Authorization Act for 1990." The Bill, and the accompanying attached report, were approved by the Committee on 3 August 1989.

2. The Committee report contains an analysis of the DoJ letter challenging the constitutionality of the McCurdy amendment on access to IG reports. The analysis concludes that the amendment is constitutional and the DoJ arguments are "ridiculous."

3. In addition to the McCurdy amendment on access to IG reports, the Committee adopted an amendment that would require the President to submit a report to Congress by 1 April on how intelligence activities related to narcotics trafficking can be integrated.

4. As you are aware, the Committee rejected an amendment sponsored by Representative Solarz that would have imposed severe restrictions on the use of the Reserve for Contingencies.

5. The Bill also includes a provision sought by OGC that would permit CIA to purchase remote sensing data notwithstanding other statutory restrictions. Currently, we are required to purchase remote sensing data through the Defense Mapping Agency.

6. With respect to the SEO, the Committee states on page 13 of the report that "it is dismayed that bureaucratic infighting has been allowed to frustrate the progress toward security objectives which are clearly in the national

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interest." The Committee adopted the approach taken in the Senate Intelligence Committee to fund SEO out of the budget of the Intelligence Community Staff. The Committee did not put as much blame on the State Department for problems with the SEO as did the Senate Intelligence Committee in its report.



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Attachment

OCA/LEG, [redacted] (10 August 89)

STAT

Distribution:

Original - General Counsel (w/atts)

- 1 - DGC/IO (w/atts)
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- 1 - OCA/LEG/Subject File: Intel Auth Bill (w/atts)
- 1 - [redacted] Signer (w/o atts)

STAT

101ST CONGRESS  
1ST SESSION

# H. R. 2748

To authorize appropriations for fiscal year 1990 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 27, 1989

Mr. BEILENSEN introduced the following bill; which was referred to the  
Permanent Select Committee on Intelligence

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## A BILL

To authorize appropriations for fiscal year 1990 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Intelligence Authoriza-
- 4 tion Act for Fiscal Year 1990".



The amendments (stated in terms of the page and line number of the introduced bill) are as follows:

On page 10, after line 13, insert the following:

CIA INSPECTOR GENERAL REPORTS

SEC. 402. Section 17 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a) is amended by striking the first period in subsection (c) and inserting in lieu thereof "and listing the title or subject of each inspection, investigation or audit conducted during the reporting period.", and by adding at the end thereof the following new subsection:

"(f) Any report of an inspection, investigation, or audit conducted by the Office of Inspector General which has been requested by either committee."

On p. 17, after line 16, add the following:

PRESIDENTIAL REPORT ON COORDINATION OF DRUG INTELLIGENCE ACTIVITIES

SEC. 704. Not later than April 1, 1990, the President shall submit to Congress a report describing how intelligence activities relating to narcotics trafficking can be integrated, including coordinating the collection and analysis of intelligence information, ensuring the dissemination of relevant intelligence information to officials with responsibility for narcotics policy and to agencies of the U.S. Government responsible for interdiction, eradication, law enforcement, and other counternarcotics activities, and coordinating and controlling all counternarcotics intelligence activities.

## 1 TITLE I—INTELLIGENCE ACTIVITIES

## 2 AUTHORIZATION OF APPROPRIATIONS

3 SEC. 101. Funds are hereby authorized to be appropri-  
4 ated for fiscal year 1990 for the conduct of the intelligence  
5 and intelligence-related activities of the following elements of  
6 the United States Government:

7 (1) The Central Intelligence Agency.

8 (2) The Department of Defense.

9 (3) The Defense Intelligence Agency.

10 (4) The National Security Agency.

11 (5) The Department of the Army, the Department  
12 of the Navy, and the Department of the Air Force.

13 (6) The Department of State.

14 (7) The Department of the Treasury.

15 (8) The Department of Energy.

16 (9) The Federal Bureau of Investigation.

17 (10) The Drug Enforcement Administration.

18 CLASSIFIED SCHEDULE OF AUTHORIZATIONS

19 SEC. 102. The amounts authorized to be appropriated  
20 under section 101, and the authorized personnel ceilings as of  
21 September 30, 1990, for the conduct of the intelligence and  
22 intelligence-related activities of the elements listed in such  
23 section, are those specified in the classified Schedule of Au-  
24 thorizations prepared by the Committee of Conference to ac-  
25 company H.R. 2748 of the One Hundred First Congress.  
26 That Schedule of Authorizations shall be made available to

1 the Committee on Appropriations of the Senate and House of  
2 Representatives and to the President. The President shall  
3 provide for suitable distribution of the schedule, or of appro-  
4 priate portions of the schedule, within the executive branch.

5 PERSONNEL CEILING ADJUSTMENTS

6 SEC. 103. The Director of Central Intelligence may au-  
7 thorize employment of civilian personnel in excess of the  
8 numbers authorized for fiscal year 1990 under sections 102  
9 and 202 of this Act when he determines that such action is  
10 necessary to the performance of important intelligence func-  
11 tions, except that such number may not, for any element of  
12 the intelligence community, exceed 2 percent of the number  
13 of civilian personnel authorized under such sections for such  
14 element. The Director of Central Intelligence shall promptly  
15 notify the Permanent Select Committee on Intelligence of the  
16 House of Representatives and the Select Committee on Intel-  
17 ligence of the Senate whenever he exercises the authority  
18 granted by this section.

19 RESTRICTION ON SUPPORT FOR MILITARY OR

20 PARAMILITARY OPERATIONS IN NICARAGUA

21 SEC. 104. Funds available to the Central Intelligence  
22 Agency, the Department of Defense, or any other agency or  
23 entity of the United States may be obligated and expended  
24 during fiscal year 1990 to provide funds, materiel, or other  
25 assistance to the Nicaraguan democratic resistance to support  
26 military or paramilitary operations in Nicaragua only as au-

4

1 thorized in section 101 and as specified in the classified  
2 Schedule of Authorizations referred to in section 102, or pur-  
3 suant to section 502 of the National Security Act of 1947, or  
4 pursuant to any provision of law specifically providing such  
5 funds, materiel, or assistance.

## 6 TITLE II—INTELLIGENCE COMMUNITY STAFF

### 7 AUTHORIZATION OF APPROPRIATIONS

8 SEC. 201. There is authorized to be appropriated for the  
9 Intelligence Community Staff for fiscal year 1990 the sum of  
10 \$28,400,000.

### 11 AUTHORIZATION OF PERSONNEL END STRENGTH

12 SEC. 202. (a) The Intelligence Community Staff is au-  
13 thorized 250 full-time personnel as of September 30, 1990.  
14 Such personnel of the Intelligence Community Staff may be  
15 permanent employees of the Intelligence Community Staff or  
16 personnel detailed from other elements of the United States  
17 Government.

18 (b) During fiscal year 1990, personnel of the Intelli-  
19 gence Community Staff shall be selected so as to provide  
20 appropriate representation from elements of the United  
21 States Government engaged in intelligence and intelligence-  
22 related activities.

23 (c) During fiscal year 1990, any officer or employee of  
24 the United States or a member of the Armed Forces who is  
25 detailed to the Intelligence Community Staff from another  
26 element of the United States Government shall be detailed on

1 a reimbursable basis, except that any such officer, employee,  
2 or member may be detailed on a nonreimbursable basis for a  
3 period of less than one year for the performance of temporary  
4 functions as required by the Director of Central Intelligence.

5 INTELLIGENCE COMMUNITY STAFF ADMINISTERED IN

6 SAME MANNER AS CENTRAL INTELLIGENCE AGENCY

7 SEC. 203. During fiscal year 1990, activities and per-  
8 sonnel of the Intelligence Community Staff shall be subject to  
9 the provisions of the National Security Act of 1947 (50  
10 U.S.C. 401 et seq.) and the Central Intelligence Agency Act  
11 of 1949 (40 U.S.C. 403a et seq.) in the same manner as  
12 activities and personnel of the Central Intelligence Agency.

13 TITLE III—CENTRAL INTELLIGENCE AGENCY

14 RETIREMENT AND DISABILITY SYSTEM AND

15 RELATED PROVISIONS

16 AUTHORIZATION OF APPROPRIATIONS

17 SEC. 301. There is authorized to be appropriated for the  
18 Central Intelligence Agency Retirement and Disability Fund  
19 for fiscal year 1990 the sum of \$154,900,000.

20 ELIGIBILITY FOR ANNUITY

21 SEC. 302. The Central Intelligence Agency Retirement  
22 Act of 1964 for Certain Employees is amended—

23 (1) by redesignating section 236 as section 237;

24 and

25 (2) by inserting after section 235 the following

26 new section:

1 "ELIGIBILITY FOR ANNUITY

2 "SEC. 236. A participant must complete, within the last  
3 two years before any separation from service, except a sepa-  
4 ration because of death or disability, at least one year of  
5 creditable civilian service during which he or she is subject to  
6 this title before he or she or his or her survivors are eligible  
7 for an annuity under this title based on the separation. If a  
8 participant, except a participant separated from the service  
9 because of death or disability, fails to meet the service re-  
10 quirement of the preceding sentence, the amounts deducted  
11 from his or her pay during the period for which no eligibility  
12 is established based on the separation shall be returned to  
13 him or her on the separation. Failure to meet this service  
14 requirement does not deprive the individual or his or her sur-  
15 vivors of annuity rights which attached on a previous  
16 separation."

17 PRECEDENCE OF SECTION 224 SURVIVOR BENEFITS OVER  
18 SECTION 232 DEATH IN SERVICE BENEFITS

19 SEC. 303. Section 232(b) of the Central Intelligence  
20 Agency Retirement Act of 1964 for Certain Employees is  
21 amended—

22 (1) by adding at the end of paragraph (1) thereof  
23 the following new sentence: "Payment of death in  
24 service benefits for former spouses is also subject to  
25 paragraph (4) of this subsection"; and

1 (2) by adding after paragraph (3) thereof the  
2 following:

3 “(4) If a former spouse eligible for death in service ben-  
4 efits under provisions of this section is or becomes eligible for  
5 survivor benefits under section 224, the benefits provided  
6 under this section will not be payable and will be superseded  
7 by the benefits provided in section 224.”.

8 COMPUTATION OF SURVIVOR BENEFIT FOR FORMER  
9 SPOUSES

10 SEC. 304. (a) Section 224(a)(2) of the Central Intelli-  
11 gence Agency Retirement Act of 1964 for Certain Employ-  
12 ees is amended by striking out “and also by an amount” and  
13 all that follows through “by the United States”.

14 (b) The amendment made by this section shall be effec-  
15 tive as of October 1, 1986.

16 SPECIAL ANNUITY COMPUTATION RULES FOR CERTAIN  
17 CIA EMPLOYEES’ SERVICE ABROAD

18 SEC. 305. The Central Intelligence Agency Act of 1949  
19 (50 U.S.C. 403a et seq.) is amended by adding at the end the  
20 following new section:

21 “SPECIAL ANNUITY COMPUTATION RULES FOR CERTAIN  
22 EMPLOYEES’ SERVICE ABROAD

23 “SEC. 18. (a) Notwithstanding any provision of chapter  
24 83 of title 5, United States Code, the annuity under subchap-  
25 ter III of such chapter of an officer or employee of the Cen-  
26 tral Intelligence Agency who retires on or after October 1,

1 1989, is not designated under section 203 of the Central In-  
2 telligence Agency Retirement Act of 1964 for Certain Em-  
3 ployees, and has served abroad as an officer or employee of  
4 the Agency on or after January 1, 1987, shall be computed  
5 as provided in subsection (b).

6       “(b)(1) The portion of the annuity relating to such serv-  
7 ice abroad that is actually performed at any time during the  
8 officer's or employee's first ten years of total service shall be  
9 computed at the rate and using the percent of average pay  
10 specified in section 8339(a)(3) of title 5, United States Code,  
11 that is normally applicable only to so much of an employee's  
12 total service as exceeds ten years.

13       “(2) The portion of the annuity relating to service  
14 abroad as described in subsection (a) but that is actually per-  
15 formed at any time after the officer's or employee's first ten  
16 years of total service shall be computed as provided in section  
17 8339(a)(3) of title 5, United States Code; but, in addition, the  
18 officer or employee shall be deemed for annuity computation  
19 purposes to have actually performed an equivalent period of  
20 service abroad during his or her first ten years of total serv-  
21 ice, and in calculating the portion of the officer's or employ-  
22 ee's annuity for his or her first ten years of total service, the  
23 computation rate and percent of average pay specified in  
24 paragraph (1) shall also be applied to the period of such  
25 deemed or equivalent service abroad.

1       “(3) The portion of the annuity relating to other service  
2 by an officer or employee as described in subsection (a) shall  
3 be computed as provided in the provisions of section 8339(a)  
4 of title 5, United States Code, that would otherwise be appli-  
5 cable to such service.

6       “(4) For purposes of this subsection, the term ‘total  
7 service’ has the meaning given such term under chapter 83 of  
8 title 5, United States Code.

9       “(c) For purposes of subsections (f) through (m) of sec-  
10 tion 8339 of title 5, United States Code, an annuity comput-  
11 ed under this section shall be deemed to be an annuity com-  
12 puted under subsections (a) and (o) of section 8339 of title 5,  
13 United States Code.

14       “(d) The provisions of subsection (a) of this section shall  
15 not apply to an officer or employee of the Central Intelli-  
16 gence Agency who would otherwise be entitled to a greater  
17 annuity computed under an otherwise applicable subsection  
18 of section 8339 of title 5, United States Code.”.

19       PORTABILITY OF OVERSEAS SERVICE RETIREMENT

20                               BENEFIT

21       SEC. 306. The special accrual rates provided by section  
22 303 of the Central Intelligence Agency Retirement Act of  
23 1964 for Certain Employees and by section 18 of the Central  
24 Intelligence Agency Act of 1949 for computation of the an-  
25 nuity of an individual who has served abroad as an officer or  
26 employee of the Central Intelligence Agency shall be used to

1 compute that portion of the annuity of such individual relat-  
2 ing to such service abroad whether or not the individual is  
3 employed by the Central Intelligence Agency at the time of  
4 retirement from Federal service.

5 TITLE IV—CENTRAL INTELLIGENCE AGENCY  
6 ADMINISTRATIVE PROVISIONS

7 REMOTE SENSING PROCUREMENT AUTHORITY

8 SEC. 401. In the performance of its functions, the Cen-  
9 tral Intelligence Agency may use its funds to procure com-  
10 mercial remote sensing data by whatever means the Agency  
11 deems to be appropriate notwithstanding any provision of law  
12 directing the procurement of such data through other Gov-  
13 ernment agencies.

14 TITLE V—IMPROVEMENTS TO PERSONNEL AU-  
15 THORITIES FOR INTELLIGENCE COMPO-  
16 NENTS OF THE DEPARTMENT OF DEFENSE

17 SPECIAL PAY FOR FOREIGN LANGUAGE PROFICIENCY

18 SEC. 501. (a)(1) Chapter 81 of title 10, United States  
19 Code, is amended by adding at the end thereof the following  
20 new section:

21 "§ 1592. Foreign language proficiency: special pay

22 "(a) The Secretary of Defense may pay special pay  
23 under this section to a civilian officer or employee of the  
24 Department of Defense who—

1           “(1) has been certified as being proficient in a for-  
2           eign language identified by the Secretary of Defense as  
3           being a language in which proficiency by civilian per-  
4           sonnel of the Department is important for the effective  
5           collection, production, or dissemination of foreign intel-  
6           ligence information; and

7           “(2) is serving in a position, or is subject to as-  
8           signment to a position, in which proficiency in that lan-  
9           guage facilitates performance of officially assigned in-  
10          telligence or intelligence-related duties.

11          “(b) The annual rate of special pay under subsection (a)  
12          shall be determined by the Secretary of Defense.

13          “(c) Special pay under this section may be paid in addi-  
14          tion to any compensation authorized under section 1604(b) of  
15          this title for which an officer or employee is eligible.”.

16          (2) The table of sections at the beginning of such chap-  
17          ter is amended by adding at the end thereof the following  
18          new item:

          “1592. Foreign language proficiency: special pay.”.

19          (b) Section 1592 of title 10, United States Code, as  
20          added by subsection (a), shall take effect on the first day of  
21          the first pay period beginning on or after the later of—

22                  (1) October 1, 1989, or

23                  (2) the date of the enactment of this Act.

1     **DEFENSE INTELLIGENCE COLLEGE GIFT ACCEPTANCE**

2                     **AUTHORITY**

3         SEC. 502. (a) Chapter 155 of title 10, United States  
4 Code, is amended by adding at the end thereof the following  
5 new section:

6     **"§ 2607. Acceptance of gifts for the Defense Intelligence**  
7                     **School**

8         “(a) The Secretary of Defense may accept, hold, admin-  
9 ister, and use any gift (including any gift of an interest in real  
10 property) made for the purpose of aiding and facilitating the  
11 work of the Defense Intelligence College and may pay all  
12 necessary expenses in connection with the acceptance of such  
13 a gift.

14         “(b) Money, and proceeds from the sale of property, re-  
15 ceived as a gift under subsection (a) shall be deposited in the  
16 Treasury and shall be available for disbursement upon the  
17 order of the Secretary of Defense.

18         “(c) Subsection (c) of section 2601 of this title applies to  
19 property that is accepted under subsection (a) in the same  
20 manner that such subsection applies to property that is ac-  
21 cepted under subsection (a) of that section.

22         “(d) In this section, the term ‘gift’ includes a bequest of  
23 personal property or a devise or real property.”.

1 (b) The table of sections at the beginning of that chapter  
2 is amended by adding at the end thereof the following new  
3 item:

"2607. Acceptance of gifts for the Defense Intelligence School."

4 PERMANENT AUTHORITY TO TERMINATE EMPLOYMENT OF  
5 CIVILIAN INTELLIGENCE OFFICERS AND EMPLOYEES  
6 OF MILITARY DEPARTMENTS AND OF THE DEFENSE  
7 INTELLIGENCE AGENCY

8 SEC. 503. (a) Section 1590(e)(1) of title 10, United  
9 States Code, is amended by striking out " , during fiscal years  
10 1988 and 1989,".

11 (b) Section 1604(e)(1) of such title is amended by strik-  
12 ing out "during fiscal years 1988 and 1989".

13 DEFENSE INTELLIGENCE AGENCY ACQUISITION OF  
14 CRITICAL SKILLS

15 SEC. 504. (a)(1) Chapter 83 of title 10, United States  
16 Code, is amended by adding at the end thereof the following  
17 new section:

18 "§ 1608. Financial assistance to certain employees in ac-  
19 quisition of critical skills

20 "(a) The Secretary of Defense shall establish an under-  
21 graduate training program with respect to civilian employees  
22 of the Defense Intelligence Agency that is similar in purpose,  
23 conditions, content, and administration to the program which  
24 the Secretary of Defense is authorized to establish under sec-  
25 tion 16 of the National Security Agency Act of 1959 (50

1 U.S.C. 402 note) for civilian employees of the National Security Agency.

3       “(b) Any payments made by the Secretary to carry out  
4 the program required to be established by subsection (a) may  
5 be made in any fiscal year only to the extent that appropriated funds are available for that purpose.”.

7       (2) The table of sections at the beginning of that chapter  
8 is amended by adding at the end thereof the following new  
9 item:

“1608. Financial assistance to certain employees in acquisition of critical skills.”.

10       (b) Section 1608 of title 10, United States Code, as  
11 added by subsection (a), shall take effect on October 1, 1989.

12 SPECIAL ANNUITY COMPUTATION RULES FOR PERIODS OF  
13 SERVICE ABROAD FOR CERTAIN DIA AND NSA  
14 EMPLOYEES

15 SEC. 505. (a) Section 1605(a) of title 10, United States  
16 Code, is amended—

17       (1) by striking out “who are subject to chapter 84  
18 of title 5,” in the last sentence; and

19       (2) by striking out the period at the end and inserting in lieu thereof “and in section 18 of the Central  
20 Intelligence Agency Act of 1949.”.

22       (b) Section 9(b) of the National Security Agency Act of  
23 1959 (50 U.S.C. 402 note) is amended—

(1) in paragraph (1)(B), by striking "(including special" and all that follows through "note)); and" and inserting in lieu thereof a semicolon;

(2) by striking the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new paragraph:

"(3) special retirement accrual in the same manner provided in section 303 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note) and in section 18 of the Central Intelligence Agency Act of 1949."

## TITLE VI—FBI NEW YORK FIELD DIVISION

### DEMONSTRATION PROJECT

#### FBI NEW YORK FIELD DIVISION DEMONSTRATION PROJECT

SEC. 601. (a) Section 601(a)(2) of the Intelligence Authorization Act, Fiscal Year 1989 is amended by striking out "who are subject by policy and practice to directed geographical transfer or reassignment".

(b) The amendment made by this section shall take effect on October 1, 1989.

1           **TITLE VII—GENERAL PROVISIONS**

2       **INCREASE IN EMPLOYEE COMPENSATION AND BENEFITS**

3                   **AUTHORIZED BY LAW**

4       **SEC. 701.** Appropriations authorized by this Act for  
5 salary, pay, retirement, and other benefits for Federal em-  
6 ployees may be increased by such additional or supplemental  
7 amounts as may be necessary for increases in such compensa-  
8 tion or benefits authorized by law.

9       **RESTRICTION OF CONDUCT OF INTELLIGENCE ACTIVITIES**

10       **SEC. 702.** The authorization of appropriations by this  
11 Act shall not be deemed to constitute authority for the con-  
12 duct of any intelligence activity which is not otherwise au-  
13 thorized by the Constitution or laws of the United States.

14       **CONFLICT OF INTEREST DISCLOSURE REGULATIONS FOR**  
15       **MEMBERS OF THE PRESIDENT'S FOREIGN INTELLI-**  
16       **GENCE ADVISORY BOARD**

17       **SEC. 703.** (a) The President shall ensure that the provi-  
18 sion of classified information to a member of the President's  
19 Foreign Intelligence Advisory Board, or to a member of any  
20 successor board performing the same or similar function, is  
21 consistent with the goal of avoiding any conflict of interest  
22 involving the use of such information in connection with a  
23 business or financial transaction of the member.

24       (b) In furtherance of the President's responsibilities  
25 under subsection (a), the President shall issue regulations re-  
26 garding—

1 (1) periodic disclosure of information on the busi-  
2 ness and financial interests of each member of the  
3 President's Foreign Intelligence Advisory Board, in-  
4 cluding any business or financial relationship of a  
5 member with a foreign government, or any entity di-  
6 rected and controlled by a foreign government, or with  
7 any corporation or other commercial entity doing busi-  
8 ness outside the United States; and

9 (2) the circumstances in which, based on such  
10 business or financial interests, a member shall not be  
11 provided classified information.

12 (c) The regulations required by subsection (b) shall take  
13 effect not later than March 1, 1990, and shall be provided to  
14 the Select Committee on Intelligence of the Senate and the  
15 Permanent Select Committee on Intelligence of the House of  
16 Representatives at least 30 days prior to such effective date.

○